

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

201 DOLORES AVENUE
SAN LEANDRO, CA 94577
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: harrison@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Joseph Remcho (1944-2003)
Robin B. Johansen
Kathleen J. Purcell (Ret.)
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Kari Krogseng

MEMORANDUM

To: Fair Political Practices Commission

From: James C. Harrison and Margaret R. Prinzing

Date: October 25, 2011

Re: Rule for Reporting Contributions to Multi-Purpose Groups - Interested Persons Meeting, October 26, 2011 (Our File No.: 990-2)

We represent organizations that may be subject to the new rules for attributing funds that are used for political purposes to the organizations' donors, members or other sources. We appreciate the opportunity to comment on the proposed regulation.

First, we agree that a regulation is needed to clarify the reporting obligations of multi-purpose committees. For example, in the *Rehrig* Advice Letter (No. A-07-126), Commission staff advised the PTA that it could use funds that it had on hand prior to taking its "first bite" to make additional political expenditures or contributions without attributing those expenditures or contributions to particular donors. Rather, staff advised that the PTA could treat itself as the source of those funds. The *Rehrig* letter provides:

Regarding membership dues received prior to the PTA unit making its first expenditure or contribution totaling \$1,000 or more, the PTA unit's past members or donors are presumed to have no reason to suspect their payments will be used for political purposes because the organization did not make contributions or expenditures prior to the "one bite." Once the PTA unit qualifies as a committee, the PTA may use any reasonable method for attributing its expenditures and contributions as contributions received from its members. *Funds on hand after the PTA unit qualifies as a committee, but received from membership dues prior to both the unit's qualifying as a committee and its use of the "one bite" exception, need not be attributed to the members if it is clear from surrounding circumstances that the members were not aware that their payments would be used for political purposes at the time of the payment. In this situation, the PTA itself would be disclosed on Schedule A as the source of the funds.*

More recently, Commission staff issued an advice letter that appears to be at odds with the advice offered in the *Rehrig* letter. In *Strout/Abegg* Advice Letter (No. A-11-143), staff advised a nonprofit that it must attribute funds used for political purposes to donors who contributed to the organization after the organization took its first bite, even if the organization had pre-first bite funds available.

We believe that it is critical to clarify the rule and to do so prospectively in a regulation after an opportunity for notice and public comment. We urge the Commission to permit an organization to use funds that were received prior to taking its first bite to make additional contributions or expenditures without attribution, provided that the organization can show that the sources of those funds had no reason to know, and did not intend, that their funds would be used for political purposes and that the funds were in the organization's cash on hand at the time of making the political expenditures.

Second, we would like to point out some practical problems that would arise from a requirement that multi-purpose organizations must attribute funds used for political purposes to their donors, even if the donors did not intend to make payments for political purposes. This issue particularly affects 501c3 organizations, which often receive donations from private foundations that are prohibited from making political expenditures and from individuals who had no intention of making a political expenditure and may have already claimed a tax deduction for a charitable donation.

The proposal in Regulation 18412 that would require a non-profit organization to attribute its funds to the sources of its donations received after the organization took its first bite presents a conflict with tax law for those who make donations to 501c3 organizations. As described in the comment letter dated October 21, 2011, from the Alliance for Justice, donors to 501c3 organizations often include private foundations, which are prohibited from using their funds for political purposes, and individual donors who had no intention of ever making a political contribution and may have already taken a permitted income tax deduction for a charitable donation. If these donors are deemed to have made a campaign contribution and, in many cases, are notified of that fact well after they made their charitable donation, the donors may be put in the untenable situation of having, unknowingly, made a campaign contribution that is prohibited by tax law and/or has already been claimed as a charitable donation for tax purposes. These foundations and individuals may, in addition to being disclosed as a contributor on the organization's campaign reports, be required to file campaign disclosure statements of their own.

To satisfy the public's need to know the sources of funds used by an organization for making political expenditures, we recommend that organizations that have not solicited funds for political purposes, have not notified their donors that they will make political expenditures, and have not received donations intended to be used for political purposes be permitted to: (1) attribute the funds to donors who agree to the use of their funds for political purposes; or (2)

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report the sources of funds that were not earmarked for political purposes as a “miscellaneous increases to cash” rather than contributions received by the organization.

Thank you for the opportunity to comment on this matter.

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